UNITED
NATIONS

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General Assembly

Distr.
LIMITED

A/AC.105/C.2/WG/NPS (1991)/DR.1
9 April 1991

ORIGINAL: ENGLISH

COMMITTEE ON THE PEACEFUL USES
OF OUTER SPACE
Legal Subcommittee
Thirtieth session
New York, 25 March-12 April 1991
Agenda item 3

DRAFT REPORT OF THE CHAIRMAN OF THE WORKING GROUP ON AGENDA ITEM 3 (THE ELABORATION OF DRAFT PRINCIPLES RELEVANT TO THE USE OF NUCLEAR POWER SOURCES IN OUTER SPACE, WITH THE AIM OF FINALIZING THE DRAFT SET OF PRINCIPLES)

1. On 25 March 1991, the Legal Subcommittee re-established its Working Group on agenda item 3.

2. The Working Group had before it the report of the Legal Subcommittee on the work of its twenty-ninth session, in 1990 (A/AC.105/457), which contained, in annexes I and III, section A, respectively, the report of the Chairman of the Working Group and the working papers that were before the Working Group at the twenty-ninth session; it also had before it the report of the Scientific and Technical Subcommittee on the work of its twenty-eighth session, in 1991 (A/AC.105/483), which contained in its chapter IV a section on the use of nuclear power sources in outer space, as well as the report of the Committee on the Peaceful Uses of Outer Space on the work of its thirty-third session, in 1990, 1/ which contained the relevant information in paragraphs 100 to 111 and 142 (a).

3. The Working Group also had before it a working paper submitted to the Legal Subcommittee at its previous session by the delegation of Canada (A/AC.105/C.2/L.154/Rev.6), a working paper submitted to the Committee on the Peaceful Uses of Outer Space at its thirty-third session by the delegations of Canada and Germany (A/AC.105/C.2/L.154/Rev.7), a working paper submitted to the Legal Subcommittee at its current session by the delegations of Canada, France, Germany and Sweden (A/AC.105/C.2/L.183) and a working paper submitted to the Legal Subcommittee at its current session by the delegations of Canada, Czechoslovakia, France, Germany, Italy, Sweden and the United Kingdom of Great Britain and Northern Ireland (A/AC.105/C.2/L.184).

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4. Following a suggestion of the Chairman, the Working Group first considered a new text of draft principle 4 set forth in a working paper submitted by the delegations of Canada, France, Germany and Sweden (A/AC.105/C.2/L.183), which had amalgamated the provisions of draft principles 2 and 4 contained in the working paper submitted by the delegations of Canada and Germany (A/AC.105/C.2/L.154/Rev.7). The Working Group thereafter considered the other draft principles as contained in the working paper submitted by the delegations of Canada and Germany (A/AC.105/C.2/L.154/Rev.7), and in the working paper submitted by the delegations of Canada, Czechoslovakia, France, Germany, Italy, Sweden and the United Kingdom (A/AC.105/C.2/L.184), bearing in mind the earlier version of those draft principles as contained in the working paper submitted by the delegation of Canada (A/AC.105/C.2/L.154/Rev.6).

Principle 4: Safety assessment

5. Some delegations expressed the view that the new text of draft principle 4 included the main ideas contained in former draft principles 2 and 4 (A/AC.105/C.2/L.154/Rev.7). The view was expressed, however, that the new formulation of draft principle 4 did not clearly require the notification prior to launching of a space object of many items of relevant information (e.g., time and place of launch, trajectory). It was the view of that delegation that prior notification of relevant information, which allowed States in the vicinity of launching sites to take precautionary measures, and which was therefore a confidence-building measure in international relations, was not identical to the notion of prior safety assessment, and that both those notions should be clearly embodied in draft principle 4. That delegation, therefore, expressed the view that the title of new draft principle 4 should be redrafted as follows: "Safety assessment and notification of the presence on board a space object of a nuclear power source", and that a new paragraph should be included in the text, as follows:

> "The State launching a space object with a nuclear power source on board shall communicate to the Secretary-General of the United Nations, prior to each launching, the following information as to the presence on board that space object of a nuclear power source:
>
> "(a) approximate time and date of launching;
>
> "(b) territory or location of launching;
>
> "(c) territories or countries beyond the launching State under the flight trajectory planned for the space object in its first stages;
>
> "(d) content of nuclear fuel."

6. Some delegations expressed the view that the notion of prior notification was already addressed, although not specifically, in paragraph 3 of new draft principle 4, in that the results of the safety assessment would be made

publicly available prior to each launch, which was tantamount to prior notification; that the safety assessment of the launching State would provide even more technical data about the launching than was required to be given under former draft principle 2 on notification; and that the data to be given in the safety assessment included many of the items of information to be notified under the proposed new paragraph. Those delegations expressed the view that, since new draft principle 2 was a compromise text resulting from an attempt to overcome the deadlock over former draft principles 2 and 4, the new proposal, detailing the contents of the prior notification, would further delay reaching consensus.

7. The view was expressed that it was necessary to retain the principle of notification among the set of principles on the use of nuclear power sources in outer space and that draft principle 2 as contained in working paper A/AC.105/C.2/L.154/Rev.6 was an acceptable formulation.

8. The view was expressed that the wording of paragraph 1 of draft principle 4 which provided that the safety assessment shall deal with all systems involved, "including, for example, the means of launching, the space platform, ... and the means of communication between ground and space" was inconsistent with the requirement in paragraph 2 that the assessment shall respect the guidelines and criteria for safe use contained in draft principle 3, since those three systems were not addressed in the guidelines and criteria in draft principle 3, which only addressed nuclear power systems. That delegation further expressed the view that specifying those systems was redundant, since the systems would in any event be covered by the words "all systems involved" and that therefore the wording should be deleted. Other delegations expressed the view that the wording in question was not inconsistent with the terms of draft principle 3 and merely constituted examples of the various systems covered by the safety assessment. The view was expressed that the systems given as examples in paragraph 1 of draft principle 4 were implicitly, if not expressly, addressed in draft principle 3. It was also felt, however, that the words "all systems involved" were directed only to systems involving the use of nuclear power sources on board a space object, and not to conventional equipment used to launch a space object, and that, in addition, safety guidelines and criteria should address the relevant systems clearly and directly, and not by implication.

9. Several questions were raised in connection with paragraph 3: what was meant by "the results" of the safety assessment; how it was intended that those results would be published; and how the publication of those results by the Secretary-General would occur. In reply, some delegations expressed the view that because of the voluminous documentation which would form the safety assessment and because of issues relating to confidentiality and intellectual property rights, the launching States would not be required to publish the safety assessment in its entirety, but only the conclusions of the safety assessment covering the relevant aspects of the mission. The view was expressed that the current formulation of paragraph 3 left a wide discretion to States as to the content of the safety assessment which would be made publicly available through the Secretary-General, and might permit the State

making the assessment to simply state that all relevant systems were safe. Other delegations expressed the view that, while the wording of paragraph 3 indeed allowed for flexibility, it would not be appropriate at the current stage to set forth a format mandating specific data to be publicly available. It was, however, in the interest of the launching State to provide sufficient information to establish international confidence in its launch of a space object with a nuclear power source on board.

10. The view was expressed that the manner in which the Secretary-General would communicate the information contained in the safety assessment to other States should be left to his discretion.

11. A question was raised as to the reason for the deletion of paragraph 3 of draft principle 4 contained in working paper A/AC.105/C.2/L.154/Rev.6, which provided a means of determining which of two or more launching States was to be responsible for the safety assessment. In reply, some delegations expressed the view that, as indicated by the asterisk appearing in paragraph 1 of the new draft principle 4, the term "State launching a space object" would be considered at a later stage. They believed that the determination of the States responsible for carrying out a safety assessment in case more than one State was involved in the launching could be done during those discussions. Those delegations expressed the view that the safety assessment should be carried out by the State launching a space object with a nuclear power source on board as well as by other States which had cooperated in the launching, including those which had designed or manufactured the space object. The view was expressed that the State which was in the best position to gather all the technical information on the mission and various systems involved should be responsible for the safety assessment, in order to allow such a safety assessment to be global and exhaustive.

Principle 7: Assistance to States

12. Some delegations expressed the view that former paragraph 1.5 of draft principle 3, which was contained in the report of the Scientific and Technical Subcommittee on the work of its twenty-seventh session, in 1990 (see A/AC.105/456, annex III, para. 15) and in document A/AC.105/C.2/L.177, and which had been deleted from the text adopted by consensus of draft principle 3 as contained in document A/AC.105/C.2/L.178, should be included as paragraph 2 of draft principle 7. Some of those delegations expressed the view that paragraph 2 (a) of principle 7 could be amplified as follows (addition underscored):

> "(a) The launching State shall promptly offer and, if requested by an affected State,* provide promptly the necessary assistance to eliminate actual and possible harmful effects, <u>including assistance to</u>

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* "The question of the definition of the term 'affected State' is to be considered later."

identify the location of the re-entry and of the area of impact of the nuclear power source on the Earth's surface, to detect the re-entered radioactive material and to carry out retrieval or clean-up operations."

Notes

1/ Official Records of the General Assembly, Forty-fifth Session, Supplement No. 20 (A/45/20).

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12. (continued) Some delegations supported the above proposal and expressed the view that, in the same manner, other refinements of previously adopted draft principles may be required before adoption of the whole set of principles.

13. The Working Group believed that a consensus could be reached in the near future on adding the following text to the end of paragraph 2 (a) of draft Principle 7:

"including assistance to identify the location of the area of impact of the nuclear power source on the Earth's surface, to detect the re-entered material and to carry out retrieval or clean-up operations."

Principle 8: Responsibility

Principle 9: Liability and Compensation

14. Following a suggestion by the Chairman, the Working Group carried out a reading of the provisions of draft Principles 8 and 9 as contained in the working paper submitted at its current session by the delegations of Canada, China, Czechoslovakia, France, Germany, Italy, the Netherlands, Sweden and the United Kingdom (A/AC.105/C.2/L.184), bearing in mind the earlier version of those draft principles as contained in the working paper submitted by the

delegations of Canada and Germany (A/AC.105/C.2/L.154/Rev.7). The Chairman also suggested that, while the co-sponsors of working paper A/AC.105/C.2/L.184 might have envisaged that draft Principles 8 and 9 should be considered together in view of their close linkage, it would be appropriate as a practical measure, to promote clarity in the discussion, that the principles be also discussed separately, paragraph by paragraph.

15. The view was expressed that, although reviewing draft Principles 8 and 9 separately for practical reasons was acceptable, that delegation could not join any consensus reached on draft Principle 8 before a consensus was also reached on draft Principle 9, since both draft principles were closely related. Some delegations expressed the view that draft Principles 8 and 9 should be considered as a package.

Principle 8: Responsibility

Paragraph 1

16. The view was expressed that, in order to fully align the text of draft Principle 8, paragraph 1, as contained in working paper A/AC.105/C.2/L.154/Rev.7, with the provisions of the 1967 Outer Space Treaty and other relevant international conventions, the words: "involving the use of nuclear power sources" should be preceded by the words: "including activities" and followed by the words: "in outer space".

17. Some delegations expressed the view that the language of paragraph 1 as contained in the new working paper (A/AC.105/C.2/L.184) had been brought more into line with the language of Article VI of the 1967 Outer Space Treaty. Other delegations expressed the view, however, that the new formulation of paragraph 1, which had transferred the reference to the 1967 Outer Space Treaty to the end of the paragraph, was ambiguous as to the relation between that Treaty and the first part of the paragraph, dealing with the international responsibility of States for national activities in outer space involving the use of nuclear power sources, and that the previous formulation of paragraph 1 of Principle 8, as contained in working paper A/AC.105/C.2/L.154/Rev.7, was preferable. Some of those delegations expressed the view that the words "In accordance with" at the beginning of this paragraph should be replaced by "In compliance with".

18. Questions were raised as to the legal force and nature of the expression "the recommendations contained in these principles" which appeared in the text of paragraphs 1 and 2. In reply, some delegations expressed the view that this wording reflected the notion that draft principles, if adopted by consensus, while constituting strong recommendations to reach certain goals, nevertheless did not have the binding nature of treaties or other international agreements. Other delegations, however, expressed the view that there was no need to specify the legal effect of the draft principles in the text under consideration and that, therefore, the words "the recommendations contained in" were unnecessary and should be deleted in paragraphs 1 and 2. The view was also expressed that those words should be retained in both

paragraphs. The view was further expressed that the word "recommendations" should be replaced by "provisions". Some delegations expressed the view that the deletion of the word "recommendations" from draft Principle 8 could be supported by reference to the drafting adopted for Principle XIV of Principles Relating to Remote Sensing of the Earth from Outer Space adopted in 1986 by the General Assembly.

Principle 9: Liability and compensation

19. Some delegations expressed the view that the new title of draft Principle 9 satisfactorily covered the issues dealt with by this draft Principle.

Paragraph 1

20. Some delegations expressed the view that the new formulation of this draft principle clarified the issue of which States were internationally liable for damage caused by a space object carrying a nuclear power source on board, by reproducing the definition of "launching State" as contained in Article I of the 1972 Liability Convention, without aiming at amending the juridical regime of liability established by that Convention. Some delegations also expressed the view that consideration might be given to the desirability of formulating a different definition of "launching State" for each principle in which that term appeared, although a single definition applicable to all principles was preferable. The view was also expressed that, while an expanded form of the definition of launching State contained in the 1972 Liability Convention might be appropriate for these principles, the Legal Subcommittee was not the proper forum to discuss a revision of the definition contained in that Convention. The view was also expressed that consideration of the meaning of launching State should be suspended, pending the consideration of draft Principle 1A.

Paragraph 2

21. The view was expressed that the term "principles of justice and equity" referred to in this paragraph should be clarified. In reply, the view was expressed that this term was taken from Article XII of the Liability Convention, and had the same meaning as in that Article.

Paragraph 3

22. The view was expressed that this paragraph should be amended to provide for payment of compensation for costs incurred in taking emergency preventive measures after receiving information about the launching of a space object with a nuclear power source on board.

23. The view was expressed that in order to avoid a conflict between paragraph 3 and Articles I and II of the 1972 Liability Convention, which did not provide for compensation of expenses incurred in recovery and clean-up operations, the text of paragraph 3 should be reformulated as follows:

"The duly substantiated expenses for search, recovery and clean-up operations, including expenses for assistance received from third parties, shall also be reimbursed".

In reply, the view was expressed that the 1972 Liability Convention encompassed those expenses and that the formulation of that paragraph as contained in working paper A/AC.105/C.2/L.154/Rev.7 should be retained.

Paragraph 4

24. The view was expressed that this paragraph should be merged with paragraph 3 to read as follows:

"For the purpose of the above paragraphs, claims should be presented and settled in accordance with the provisions of the 1972 Convention on International Liability for Damage Caused by Space Objects."

In reply, the view was expressed that the above proposal was unacceptable.

Principle 11: Relations with international treaties

26. After deliberation, the Working Group recorded consensus on deletion of this draft principle.

Principle 12: Revision

27. Some delegations expressed the view that the wording of this draft principle was acceptable and, therefore, it should be adopted. The view was expressed, however, that the wording of this draft principle should be viewed in the light of all other draft principles, and a decision on its specific formulation should be postponed until the whole set of principles was finalized.

28. On 10 April 1990 the delegation of the United States presented a working paper (A/AC.105/C.2/L.185) containing proposals for clarifications and modifications of draft Principle 3 (guidelines and criteria for safe use). This working paper is set out in section ___ of Annex IV to the report of the Subcommittee. In this connection, the view was expressed that discussion of draft Principle 3 should not be reopened. The view was also expressed that the submission of that working paper before the conclusion of the deliberations of the Working Group prevented a discussion of the working paper, and was regrettable.

29. The Working Group held its final meeting on 11 April 1991, when it considered and approved the present report.